

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In Re:

**BNC MORTGAGE, LLC,**

Debtor.

## Chapter 11

**Case No: 09-10137-scc**

**Hon. Shelley C. Chapman**  
**Bankruptcy Judge**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION  
TO TAKE LEAVE TO FILE LATE PROOF OF CLAIM**

that this Court should focus its analysis "primarily on the reason for the delay, and specifically whether the delay was in the reasonable control of the movant." Lehman Bros., 433 B.R. at 119—20. The movant bears the burden of establishing excusable neglect. *See id.*

Under Nevada law, "a lien constitutes a monetary encumbrance that does not alter title when foreclosure proceedings have not been *initiated* on the lien." Nev. Ass'n Servs. v. Eighth Judicial Dist. Court of Nev., 338 P.3d 1250, 1256, 2014 Nev. LEXIS 118, \*15, 130 Nev. Adv. Rep. 94 (Nev. December 4, 2014); *See also Invest Vegas, LLC v. 21st Mortg. Corp.* (In re Residential Capital, LLC), 556 B.R. 555, 556, 2016 Bankr. LEXIS 3170, \*1, 76 Collier Bankr. Cas. 2d (MB) 308, 63 Bankr. Ct. Dec. 5 (Bankr. S.D.N.Y. August 30, 2016) ("Until foreclosure, the beneficiary retains only a lien interest in the property, not legal title."). A quiet title action under Nevada Revised Statute 40.010 requires an "adverse" claim to title to real property. A claim of wrongful foreclosure under Nevada law extends to the *exercise of the power of sale*. Martinez v. Cent. Mortg. Co., 2016 U.S. Dist. LEXIS 29526, \*10 (D. Nev. March 7, 2016) (the material issue of fact in a wrongful foreclosure claim is whether the trustor was in default when *the power of sale was exercised*.'" In re Mortg. Electronic Registration Systems, Inc., 754 F.3d 772 (9th Cir. 2014) (quoting Collins v. Union Fed. Savings & Loan Ass'n, 99 Nev. 284, 662 P.2d 610 (1983)).

"The bankruptcy court found that the state court quiet title action did not seek personal liability on a right to payment against the debtor, but only sought a determination of secured status with respect to the real property" Martinez v. Olague (In re Martinez), 2011 Bankr. LEXIS 4833, \*1 (B.A.P. 9th Cir. October 11, 2011).

Here, Movant argues that he has good cause for filing a late claim because (1) he did not receive Administrative Bar Date Notices prior to the Bar Date in 2009, (2) his state court claims were not ripe for determination until 2019, (3) he does not seek damages against the estate, but rather from Debtor's insurance coverage, and (4) a determination of title to the real property will not affect the bankruptcy estate since Debtor sold or assigned its purported lien to co-defendant(s) as part of the state court action. Debtor will suffer no prejudice by the length of delay as Movant filed the initial proof of claim against Debtor, there are no other creditors, and Debtor does not appear to have prosecuted its case to any meaningful extent in the ten (10) years since it was filed. The late proof of claim was not within the reasonable control of Movant as the state court claims were not ripe for determination until an adverse claim (i.e. notice of trustee sale) jeopardized the superiority of Movant's title to the real property. Movant acted in good faith by immediately conferring with Debtor's bankruptcy and state court counsels after receipt of the Bar Date notice in an attempt to reach stipulation to lift the automatic stay and, after a reasonable amount of time elapsed without resolution, Movant expeditiously moved for relief with this Court.

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**CONCLUSION**

The Movant delayed in filing the proof of claim to this motion as a result of excusable neglect. Movant's proof of claim, if allowed, will not unduly prejudice Debtor and the delay in filing Movant's proof of claim will not substantially impact the judicial proceedings in either this Bankruptcy Court or the related action in the Eighth Judicial District Court of Clark County, Nevada, in which Debtor is already a named defendant. Movant respectfully requests an Order granting permission to accept his late proof of claim.

Dated: Clark County, Nevada  
October 31, 2019

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of October, 2019, I served a true and correct copy of the foregoing *Memorandum of Law in Support of Motion for Leave to File Late Proof of Claim* via U.S. Mail, first class postage prepaid, addressed to the following:

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